Office-Supreme Court, U.S.
FILED
OCT 11 1984
ALEXANDER L. STEVAS,
CLERK

CASE NO. 84-160

In the

Supreme Court of the United States

October Term, 1984

THE BEAUFORT GAZETTE,
A South Carolina Corporation,

Petitioner,

vs.

KEITH MERRY DELOACH,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

H. Fred Kuhn, Jr., Esq.
Moss, Bailey & Dore, P.A.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina
29902
(803) 524-3373

Attorney for Respondent

BEST AVAILABLE COPY

QUESTION PRESENTED

Do the First and Fourteenth Amendments to the United States Constitution require a court to make its own independent evaluation of all the evidence as to actual malice in a libel action?

TABLE OF CONTENTS

	Pages
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Summary of Argument	1
Argument	2
Conclusion	5

TABLE OF AUTHORITIES

1. Bose Corp. v. Consumers Union of U.S., Inc., _____ U.S. _____, 104 S.Ct. 1949, _____ L.Ed. _____ (1984) .....p. 2,5

SUMMARY OF ARGUMENT

The South Carolina Supreme Court did conduct an independent evaluation of the evidence in the record and determined that there was clear and convincing evidence of actual malice.

ARGUMENT

In Bose Corp. v. Consumers Union of U.S., Inc., _____ U.S. _____, 104 S.Ct. 1949, _____ L.Ed. _____ (1984) this Court held that appellate judges in libel cases must exercise independent judgment and determine whether the record establishes actual malice with convincing clarity.

The South Carolina Supreme Court did perform an independent appellate review of the evidence in this case. The evidence of actual malice consisted of the following:

(1) The newspaper's admission in its retraction that the article about the plaintiff was erroneous and that he had been neither arrested nor charged. (Petition, p. 12d).

(2) The newspaper reporter's testimony that Lt. Palmer of the City Police Department had told him that the plaintiff had been arrested. (Petition, p. 12d-12e).

(3) Lt. Palmer's testimony that he did

BEST AVAILABLE COPY

not tell the reporter that the plaintiff had been arrested or charged. (Petition, p. 12e).

(4) Lt. Palmer's testimony that the reporter also checked the public arrest docket every day. (Petition, p. 12e)

(5) The reporter's testimony that it was his usual practice to check the public arrest docket, which was easily available to him, before writing a story. (Petition, p. 12f).

(6) The reporter's assertion that he did not check the public arrest docket this particular day because he had to meet an eleven o'clock deadline, even though the article didn't appear until two (2) days later. (Petition, p. 12f, 12c).

(7) The reporter's admission that he destroyed his notes of his meeting with Lt. Palmer after he learned of this lawsuit. (Petition, p. 12f).

(8) The reporter's admission that he

BEST AVAILABLE COPY

failed to file a report with his editor explaining the inaccuracy of the story, even though this was the newspaper's standard procedure. (Petition, p. 12f).

All of this evidence was reviewed by the South Carolina Supreme Court in its unanimous opinion. (Petition, p. 12d-12f). The direct conflict in the reporter's and the police officer's version was resolved by the jury in favor of the police officer. The Court concluded that, in light of the other evidence enumerated above, this was entirely justified.

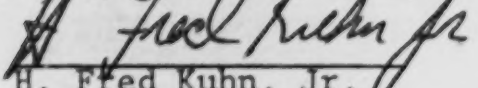
CONCLUSION

This Court, in Bose Corp. v. Consumers Union of U.S., Inc., supra, did not hold that a plaintiff in a libel action must try his case once before a jury in a trial court and, if successful, must try it again a second time before an appellate court on the factual issue of actual malice. The South Carolina Supreme Court in this case independently reviewed the record and held that there was more than sufficient evidence of actual malice to warrant submitting this issue to the jury.

It is accordingly respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

MOSS, BAILEY & DORE, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina
29902
(803) 524-3373